CONTENTS.

	PAGE
BRIEF	1-35
STATEMENT	1

FIRST POINT.

THE COURT BELOW ERRED IN ITS DECISION BECAUSE IT DISREGARDED THE HISTORY OF THE SECTION—R. S. 4527—WHICH IT WAS CONSTRUING 6

SECOND POINT.

THE COURT BELOW ERRED IN CONSTRUING A CLEARLY WORDED STATUTE AS AMBIGUOUS, AND IN DISREGARDING ENTIRELY A WORD OF SUCH A DEFINITE AND TECHNICAL MEANING AS "COMPENSATION" 10

THIRD POINT.

THE COURT BELOW ERRED IN DISREGARDING THE JUDICIAL HISTORY OF R. S. §4527 AND COGNATE SECTIONS OF THE ACT OF JUNE 7, 1872, WHICH INDICATE THAT THERE SHOULD HAVE BEEN A DECISION SUPPORTING THE PETITIONER'S—SHIPOWNER'S—CONTENTION IN THIS CASE 13

LAST POINT.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT SHOULD BE REVERSED AND THE CASE SHOULD BE REMANDED WITH INSTRUCTIONS TO THE DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA TO DISMISS THE LIBEL 35

APPENDIX I	37
APPENDIX II	39
APPENDIX III	45

150305

INDEX OF CASES CITED.

	PAGE
Aclin v. *People's etc. Ass'n*, 293 Fed. 392	43
The Adolph, 5 Fed. 501	33
Aldridge v. *Williams*, 3 How. 1	43
The Alice Blanchard, 92 Fed. 519	23, 24
The Amazon, 144 Fed. 153	29
The August Belmont, 153 Fed. 639	34
Bayman v. *Ross*, 167 U. S. 548	11
Brown v. *U. S.*, 283 Fed. 425	23
Buckley v. *Oceanic SS. Co.*, 5 Fed. (2d) 545	30
Caffyn v. *Peabody*, 149 Fed. 294	23, 24
Calvin v. *Huntley*, 178 Mass. 29	19-21
Caminetti v. *United States*, 242 U. S. 470	17
The Charles D. Lane, 106 Fed. 746	25-26
The Chas. L. Baylis, 25 Fed. 862	28
The City of Montgomery, 210 Fed. 673	29
Covert v. *British Brig Wexford*, 3 Fed. 577	30, 31-33
Cox v. *Lykes Bros.*, 237 N. Y. 376	21-22
Dary v. *The Caroline Miller*, 36 Fed. 507	26
Dewey v. *United States*, 178 U. S. 510	17
The Donna Lane, 299 Fed. 977	34
Duplex Co. v. *Deering*, 254 U. S. 443	43
The Fort Gaines, 18 Fed. (2d) 413	28, 33, 48
The Geo. B. Ferguson, 140 Fed. 955	23
Gerber v. *Spencer*, 278 Fed. 886	28, 30
The Glenesslin, 96 Fed. 768	23, 24
The Great Canton, 299 Fed. 953	27
Holley v. *City of Mt. Vernon*, 141 N. Y. App. Div. 823	12
Hughes v. *Southern Pacific Co.*, 274 Fed. 876	23, 27
The Inland, 271 Fed. 1008, 279 Fed. 1018	23, 26
Inter-Island Steam Nav. Co. v. *Byrne*, 239 U. S. 459	6

PAGE

The John R. Bergen, 122 Fed. 98 26
The Joseph B. Thomas, 136 Fed. 693 34

Manhattan Canning Co. v. *Wilson*, 217 Fed. 41 27
Mennen Co. v. *Fed'l Trade Com'n*, 288 Fed. 774, 262 U. S. 759 43
The Meton, 287 Fed. 531 ..... 23, 26
Mitchell v. *Great Works etc. Co.*, 2 Story 648; Fed. Cas. #9,662 43

The Nika, 287 Fed. 717 28

The Quaker City, 290 Fed. 409 34

Robertson v. *Baldwin*, 165 U. S. 275 16

The St. Paul, 77 Fed. 998 ..... 23, 25, 27
The Schooner Jefferson Borden, 6 Fed. 301 34
The Staghound and the Gamecock, 97 Fed. 973 23
The Steel Trader, 10 Fed. (2d) 248; 13 Fed. (2d) 614; 273 U. S. 680 ..... 2, 4

Tindle v. *Davison*, 66 L. T. (N. S.) 372 8
The Trader, 17 Fed. (2d) 623 31
Tucker v. *Alexandroff*, 183 U. S. 424 18-19

U. S. v. *Coca Cola Co.*, 241 U. S. 265 43
U. S. v. *St. Paul etc. Co.*, 247 U. S. 310 43
U. S. v. *Thind*, 261 U. S. 204 43
U. S. v. *Texas Missouri Freight Ass'n*, 166 U. S. 290 43
U. S. v. *Union Pac. R. R. Co.*, 91 U. S. 72 43

The Villa y Herman, 101 Fed. 132 34

Statutes.

PAGE

Act of June 7, 1872, c. 322, 17 Stat. L. 262 ..... 2, 6, 7, 16, 28, 39, 43, 44

Belgian Code of Commerce, Book II, Title II, Art. 93 47

Dutch Indies' Code of Commerce, Art. 411 47-48

English Merchant Shipping Act, 1854, 17 & 18 Vict., c. 104, §167 ..... 7, 8, 32, 49

French Code of Commerce, Art. 252 45-46

Italian Code of Commerce, Art. 529 46

Netherlands Code of Commerce, Art. 411 47-48

Norwegian Act of Feb. 16, 1923, §34 48

Revised Statutes, 1873-74, Vol. II., p. 881 8

Revised Statutes, 1878, p. 875 8

United States Revised Statutes:

§4526 ..... 15, 36

§4527 ..... 2, 3, 5, 6, 7, 9, 10, 16, 18, 19, 25, 26, 27, 28, 29, 31, 34, 39, 44, 45, 49

§4529 ..... 27, 28, 29, 30, 31, 37

§4582 ..... 16, 37, 38

§§4598, 4599 16

United States Code, Title 46, §594 8

MISCELLANEOUS.

	PAGE
Arnold, Law of Damages and Compensation	14
Bouvier's Law Dictionary, Rawle's Third Revision, Vol. 3	12
Congressional Globe, Forty-second Congress, Second Session	9, 39-42
Clark, New York Law of Damages, Vol. 1	14
Sedgwick, Treatise on the Measure of Damages	14
Stinson's Law Dictionary	12
Webster's New International Dictionary, 1927 edition	12
Words and Phrases, First Series, Vol. 2	13
Words and Phrases, Second Series, Vol. 1	13

SUPREME COURT OF THE UNITED STATES.

UNITED STATES STEEL PRODUCTS COMPANY, Claimant and Owner of the Steamship *Steel Trader, et al.*, Petitioners, *against* DONALD J. ADAMS, Respondent.	October Term, 1927. No. 106.

BRIEF FOR CLAIMANTS PETITIONERS.

STATEMENT OF CASE.

This case comes here on a *writ of certiorari* to the Circuit Court of Appeals for the Fifth Circuit, granted November 1, 1926, 273 U. S. 680.

The writ seeks to review a decree of the United States Circuit Court of Appeals for the Fifth Circuit made May 13, 1926, which affirmed a decree in favor of Adams in the United States District Court for the Eastern District of Louisiana, rendered December 31, 1925, by Judge Burns and signed January 31, 1926.

This decree was entered, according to the practice of the Fifth Circuit, against the stipulators on the bond by which the steamship was released from seizure, namely, the United States Steel Products Company, claimant and principal, and the Globe Indemnity Company as surety. *Decree*, p. 27.* Both these parties are petitioners here.

* The references in this brief are to pages in the Record unless otherwise stated.

The two opinions of Judge Burns in the District Court are reported as "*The Steel Trader*", 10 Fed. (2nd) 248, and 250 and are found in the Record at pages 17-21; 22-27.

The opinion in the Circuit Court of Appeals is reported as "*The Steel Trader*", 13 Fed. (2nd) 614 and is printed here at pages 33 to 39 of the Record.

The formal decree of the Circuit Court of Appeals, against which this writ was issued, was made on May 13, 1926. *Judgment*, p. 39.

The only question involved in this case here is the proper interpretation and construction of Section 4527 of the United States Revised Statutes, which was Section 21 of the Act of June 7, 1872, 17 Stat. L. 266. This Section now reads as follows (italics ours):

> "*Any seaman* who has signed an agreement and is afterward *discharged before the commencement of the voyage or before one month's wages are earned*, without fault on his part justifying such discharge, and without his consent, *shall be entitled to receive* from the master or owner, in addition to any wages he may have earned, a *sum equal in amount to one month's wages as compensation*, and may, on adducing evidence satisfactory to the court hearing the case, of having been improperly discharged, recover *such compensation* as if it were wages duly earned."

The facts, so far as here relevant, are as follows:

On or about November 29, 1921, Donald J. Adams, respondent herein and libelant and appellee below, signed articles as a seaman on the steamship *Steel Trader* for a trip from New Orleans to Greece and the Far East and return. Pp. 1, 7, 17, 33.

On December 12, 1921, at Port Arthur, Texas, after the voyage out had begun, Adams was, as the courts below found, wrongfully discharged from the vessel and was paid off under and in accordance with R. S. §4527, before a United States Shipping Commissioner. He was paid the wages he had earned to the date of his discharge, and also one month's extra wages, as provided in the statute. Pp. 9, 13, 18, 33.

On May 24, 1922, Adams filed his libel in admiralty in this suit in the United States District Court for the Eastern District of Louisiana, proceeding *in rem* against the steamship *Steel Trader*, and claiming damages for breach of contract based upon his wrongful discharge from the vessel. P. 1.

Thereupon the United States Steel Products Company, one of the petitioners herein, claimed the vessel as owner, p. 5, released her from seizure by giving its bond as principal with the Globe Indemnity Company, the other petitioner herein, as surety thereon, pp. 6, 27, and answered the libel, setting up payment as above set forth. P. 7.

The facts of the case were undisputed and the suit was defended, on the merits, solely on the ground that Adams had been discharged and paid off fully and legally, precisely in accordance with the terms of R. S. §4527, pp. 8-9, and the vessel and/or her owners had consequently complied with and fulfilled all their obligations and liabilities to him. *Answer*, p. 9.

On December 4, 1925, the District Court rendered its first opinion in favor of Adams, holding that R. S. §4527 provided only for a penalty and did not destroy the sea-

man's right to damages for ordinary breach of contract. *The Steel Trader*, 10 Fed. (2d) 248; pp. 17-21.

On December 31, 1925, the District Court, in refusing an application for rehearing, rendered a second opinion in favor of libelant on entirely different grounds, to wit, that the statute applied only to cases of discharge before the commencement of the voyage and was not applicable to this case, where the discharge occurred at a second port after the voyage had begun. *The Steel Trader*, 10 Fed. (2d) 250; pp. 22-27.

In the first opinion Judge Burns refers to the month's wages of $80 as "already paid him [the libellant] as a penalty." P. 21. In his opinion on rehearing he said:

> "The inadvertent use of the words 'as a penalty' in the concluding paragraph of the original memorandum opinion filed December 4th, 1925, is to be taken as amended so as to read 'erroneously paid as extra compensation.'" Pp. 26-27.

Thus the District Judge seems to have realized that unless he held the statute inapplicable, as he did in his second opinion, he would have to recognize the payment of a month's wages as "*compensation*" for the damages arising out of the breach of contract.

A decree was then entered in favor of Adams and against the two petitioners herein, in an amount covering the wages which the libelant would have earned to the end of the voyage upon which he had shipped if he had not been discharged, less a credit for the one month's extra wages paid him under the statute. P. 27.

Thereupon an appeal was taken by petitioners to the Circuit Court of Appeals for the Fifth Circuit, which affirmed the decree of the District Court and, in its opinion of May 13, 1926, held that the remedy and compensation provided for in R. S. §4527 are not exclusive and are meant to cover only the payments due at the time of discharge, leaving the seaman his ordinary remedy for damages for breach of contract in addition to this statutory compensation. Pp. 35-39.

The question involved here, therefore, is solely a question of construction, namely, whether the Circuit Court of Appeals for the Fifth Circuit was right in affirming the decision of Judge Burns, and in holding that, notwithstanding the clear language of Section 4527, Adams was entitled to recover damages for breach of contract in spite of the fact that he had been paid off before a United States Shipping Commissioner in accordance with the provisions of Section 4527, and had received the sum provided for as "*compensation*" in that statute for his wrongful discharge.

The case therefore is within a very narrow compass.

Summarized, the assignments of error are that the Court erred in holding

1. That Section 4527 was not applicable to the case, and

2. That the amount of compensation provided for therein and paid in this case to Adams did not constitute an extinguishment of his claim against the steamship for damages for wrongful discharge.

The contentions of the petitioner are that in thus holding the Circuit Court of Appeals failed

1. To consider the history of the legislation which resulted in the Act of June 7, 1872, of which Act Section 4527 was Section 21,

2. That in construing Section 4527 the Court indulged in wrongful interpretation of the canons of construction, and

3. That in its decision the Court disregarded the judicial history of Section 4527 and other cognate sections of the Act of June 7, 1872.

FIRST POINT.

THE COURT BELOW ERRED IN ITS DECISION BECAUSE IT DISREGARDED THE HISTORY OF THE SECTION—R. S. 4527—WHICH IT WAS CONSTRUING.

The Act of June 7, 1872, c. 322, 17 Stat. L. 262, of which R. S. §4527 was a part, being Section 21 thereof, was referred to by Mr. Justice McReynolds in *Inter-Island Steam Navigation Co.* v. *Byrne*, 239 U. S. 459 (1915), at page 460 as follows:

> "By a comprehensive act containing sixty-eight sections, approved June 7, 1872, c. 322, 17 Stat. 262, and entitled 'An Act to authorize the appointment of shipping commissioners by the several circuit courts of the United States, to superintend the shipping and discharge of seamen engaged in merchant ships belonging to the United States, and for the further protection of seamen,' Congress prescribed regulations concerning the employment, wages, treatment and protection of seamen. • • •"

The section of this Act under consideration in this case had its immediate ancestry in the British Merchant Shipping Act of 1854, 17 & 18 Vict., c. 104.

Section 167 of the Merchant Shipping Act of 1854, reads as follows:

> Sec. 167. Any seaman who has signed an agreement, and is afterwards discharged before the commencement of the voyage, or before one month's wages are earned, without fault on his part justifying such discharge and without his consent, shall be entitled to *recover* from the master or owner, in addition to any wages he may have earned, *due compensation for the damage thereby caused to him, not exceeding one month's wages*, and may, on adducing such evidence as the Court hearing the case deems satisfactory of *his* having been so improperly discharged as aforesaid, recover such compensation as if it were wages duly earned.

The parts in italics are the passages which are not the same in the Merchant Shipping Act and in Section 21 of the Act of June 7, 1872.

The word "recover" italicized in the sixth line of Sec. 167 of the Merchant Shipping Act, was changed to "receive", both in Section 21 of the Act of June 7, 1872, and in R. S. §4527.

The phrase beginning "*due compensation*" and ending "*one month's wages*" was changed in the American Act to "*a sum equal in amount to one month's wages as compensation.*"

The word "*his*" italicized in the eleventh line of Sec. 167 of the Merchant Shipping Act was omitted from the American Act.

The passage commencing with "*adducing*" and ending "*as aforesaid*" in Section 21 of the original Act of June 7, 1872, was the same as in the English Statute, but it was altered in the first edition of the Revised Statutes, 1873-74, Vol. II, page 881, to read:

> "On adducing evidence satisfactory to the Court hearing the case, of having been improperly discharged."

This alteration was carried on into the second edition of the Revised Statutes, 1878, page 875, and appears in the present United States Code, Title 46, Section 594.

The English Courts have construed Section 167 of the Merchant Shipping Act in accordance with the contention of the petitioner-claimant.

In the case of *Tindle* v. *Davison* (Queen's Bench Division, 1892), 66 L. T. (N. S.) 372; the plaintiff was a seaman who signed for a voyage from Sunderland to Bilbao and back, for any period not exceeding six months. The voyage terminated in twenty-one days and plaintiff was discharged at Sunderland. He sued for one month's extra wages under the Merchant Shipping Act, 1854 (17 & 18 Vict., c. 104), Sec. 167, and this was awarded in the Magistrates' Court. The Queen's Bench Division reversed the Magistrates and held that there had not been a wrongful discharge.

In the course of his opinion Wright, J., said, however, at page 374 (italics ours):

> "• • • The meaning of the section (Sec. 167) is that, when a seaman is improperly discharged, he is to have due compensation as to a month's

> wages *in lieu of his right of action*, unless he has earned a month's wages, in which case the section does not apply."

That the purpose of the legislation was to bring over into our law the provisions of the British Merchant Shipping Act is indicated by the fact that in the Congressional Globe for the Second Session of the Forty-second Congress, Mr. Conger, of Michigan, who was sponsoring the Bill, said on March 20, 1872, at page 1836 of the Congressional Globe—

> "* * * The object of the bill, as indicated in its title, is to protect seamen by legal regulations as to the mode of their shipping and discharge, in lack of any laws now existing on the subject. The bill is substantially the Shipping-Commissioner's Act of England, with such changes as have been deemed necessary to adapt it to this country. * * *"

R. S. Sec. 4527, which was Section 21 of the Act then under discussion was not debated, although various other sections were debated. *Congressional Globe*, p. 2172, and following.

The legislative history of the Act is given more fully in Appendix II in this brief.

In both the parent British Statute and in R. S. §4527 the payment is compensation and is the seamen's exclusive remedy, but in our act the compensatory damages are fixed at one month's wages, whereas in England seamen, in cases within the act, recover damages as compensation on a scale to be determined by the Court but not to exceed one month's wages.

Though the amount paid may be different under the two acts, after payment the result is the same—the seaman has received "compensation".

The principal maritime nations of continental Europe have, in their codes, provisions of a similar nature which we have embodied in Appendix III hereof.

The object of this legislation in all countries is to give seamen a simple and summary method of proving damages in the event of wrongful discharge, before a month's wages have been earned, or before the sailing of his ship, as the particular statute may provide.

In this case the Courts below, it is submitted, have held an American shipowner, who has complied with R. S. §4527 in all respects, to a liability many times greater than that statute, or its British prototype, would permit.

SECOND POINT.

THE COURT BELOW ERRED IN CONSTRUING A CLEARLY WORDED STATUTE AS AMBIGUOUS, AND IN DISREGARDING ENTIRELY A WORD OF SUCH A DEFINITE AND TECHNICAL MEANING AS "COMPENSATION."

The whole basis of the Court's decision rests upon the following excerpts from its opinion:

> 1. "To say the least, the language of the provision in question does not clearly manifest a purpose to give to the payment to a seaman wrongfully discharged within the time mentioned of the amount of any wages he may have earned and in addition a sum

equal to one month's wages the effect of satisfying all liability incurred by wrongfully discharging him." (*Record*, p. 34.)

2. "The language of R. S., Sec. 4527, is consistent with an intention to treat the amount required to be paid to the wrongfully discharged seaman as compensation for the service already rendered by him. Certainly that language falls far short of expressly absolving the vessel, on the payment of such amount, from her liability for damages for breaching the contract evidenced by the shipping articles. That provision determines what is payable to the wrongfully discharged seaman at the time of his discharge." (*Record*, pp. 36-37.)

The Court holds, for the quoted reasons, that because Congress has not specifically stated that the remedy provided in the statute shall be exclusive or that the seaman may not recover in addition to the amounts provided in the statute further sums in the way of damages for breach of contract, the act must be construed in favor of the seaman and against any such restriction of it.

This interpretation overlooks the fact that Congress in drafting the act has twice used the word "*compensation*" to describe the one month's extra wages allowed in the act for wrongful discharge.

The word "*compensation*" in both ordinary use and as a legal term means payment, consideration, remuneration, or reward.

In the case of *Bauman* v. *Ross*, 167 U. S. 548 (1897), this Court had occasion to consider the meaning of the word "*compensation*" in connection with certain questions aris-

ing out of the condemnation of a permanent right of way for the public over certain lands in the District of Columbia. In support of its opinion this Court cited with approval some decisions of the state courts. The following quotation from an Ohio opinion appears at page 581:

> "• • • The word *compensation* imports that a wrong or injury has been inflicted, and which must be redressed in money. Money must be paid to the extent of the injury, • • •"

In the case of *Holley* v. *City of Mount Vernon*, 141 N. Y. App. Div. 823 (1910), the Appellate Division for the Second Department, in defining the meaning of "compensation," said, at page 824:

> "• • • 'Compensation' is defined as 'A recompense or reward for some loss, injury, or service, especially when it is given by statute.' (6 Am. & Eng. Ency. of Law [2d. Ed.], 369.) • • •"

Stinson's Law Dictionary defines *compensation* as "A consideration; recompense," and *recompense* means:

> "A reward for services; remuneration for goods or other property."
>
> Bouvier's Law Dictionary, Rawle's Third Revision, Volume 3, Page 2843.

In Webster's New International Dictionary, 1927 Edition, the intransitive meaning of the verb "to compensate" is given as "to make compensation; specifically, to make amends; to supply an equivalent." And "compensation" is defined as

> "that which constitutes, or is regarded as, an equivalent or recompense; • • • that which compensates

for loss or privation; amends, remuneration; recompense."

In Volume 2 of Words and Phrases, First Series, the following definition of compensation appears at page 1352 among many similar legal definitions from decisions there quoted:

> "The primary significance of the word 'compensation' is equivalence, and the second or more common meaning is something given or obtained as an equivalent."

In Volume 1 of the Second Series of Words and Phrases the following definition appears at page 826:

> "'Compensation' means that which compensates for loss or privilege; a recompense for some loss."

In the same volume, at page 828, under the sub-title, "As remuneration for injury," these definitions of compensation are given:

> "'*Compensation*' is the bottom principle of the law of damages, and consists in the restoration of the party injured, as near as may be, to his former position by allowing a money equivalent of his property which has been taken, injured or destroyed. • • • "
>
> "The term '*compensation*,' when applied to damages, has a fixed legal signification much more restricted than its general or common acceptation. • • • "

These definitions state the foundation of the elemental and underlying principles of the law of damages.

Thus Mr. Clark, in his New York Law of Damages, commences his work as follows (Volume 1, Chapter 1, Section 1, Page 1) (italics ours):

> "§1. In General.—The relief afforded at law, except in special forms of action, either *for the breach of a contract* or a tortious invasion of a right, is by way of damages or pecuniary *compensation*, and the law of damages relates primarily to the amount and elements of the *compensation* to be awarded. • • •"

In the second Edition, 1919, of Mr. Arnold's well-known work on the English Law of Damages and Compensation, "*compensation*" is thus defined, at page 8 (italics ours):

> "The term compensation is ordinarily used in relation to a lawful act which has caused loss or injury, *in respect of which an indemnity—more or less adequate—may be obtained in accordance with a particular statute.*"

In the Ninth Edition of Sedgwick's Treatise on the Measure of Damages, the general principles adopted in the common law system as to damages are thus stated, at Page 24 of Volume 1:

> "§29. Damages consist in compensation for loss sustained. • • • By the general system of our law, for every invasion of right there is a remedy, and that remedy is *compensation*. [Italics Sedgwick's.] This compensation is furnished in the damages which are awarded."

In enacting the statute, Congress, as recognized even by the Courts below, had the intention of making provision for seamen discharged at the commencement of a voyage, and if Congress intended to provide for a definite and fixed rule

of damages it could not have used a more appropriate word than "*compensation.*"

If it had been intended by this statute merely to provide a penalty or temporary bonus to be paid to the seaman at the time of his discharge, reserving to him in addition the right to claim additional damages for breach of contract, Congress would certainly not have used so strong or clearly defined a word as "*compensation*" and would have placed in the statute in clear words a reservation of the seaman's rights in that respect.

Congress, in providing that under the circumstances named the seaman should be allowed "in addition to any wages he may have earned a sum equal in amount to one month's wages *as compensation*," clearly negatived the idea that the remedy should be in addition to any other compensation, whether for damages for breach of contract or otherwise.

It is submitted that Congress has provided in this statute a clearly defined constitutional remedy for its wards, the seamen.

It fixed a measure of damages which would be certain and easily proved.

This is not without its analogies in other provisions of our legislation regarding seamen.

By Section 4526 of the Revised Statutes of the United States Congress has provided that in case of the loss or wreck of a vessel the seaman is entitled only to his wages for the services rendered prior to the loss or wreck of the vessel and he is entitled to no further wages regardless of what the terms of his contract might have been.

In Section 4582 of the United States Revised Statutes it is provided that if a vessel is sold abroad the seaman is entitled to the wages due him and is to be provided with passage home or its equivalent.

The constitutionality of this statute has never been questioned.

On the contrary, in *Robertson* vs. *Baldwin*, 165 U. S., 275, this Court held that Sections 4598 and 4599 of the Revised Statutes of the United States, requiring seamen to carry out their contracts in accordance with the shipping articles, and making them liable to arrest for failure so to do, were constitutional and those sections are also a part of the same Act of June 7, 1872, 17 Stat., 262, which contains R. S. 4527.

This Court said at page 287:

> "• • • In this act and the amendments thereto very careful provisions are made for the protection of seamen against the frauds and cruelty of masters, the devices of boarding house keepers, and, as far as possible, against the consequences of their own ignorance and improvidence. At the same time discipline is more stringently enforced by additional punishments for desertion, absence without leave, disobedience, insubordination and barratry. Indeed, seamen are treated by Congress, as well as by the Parliament of Great Britain, as deficient in that full and intelligent responsibility for their acts which is accredited to ordinary adults, and as needing the protection of the law in the same sense which minors and wards are entitled to the protection of their parents and guardians: • • • The ancient characterization of seamen as 'wards of admiralty' is even more accurate now than it was formerly."

It is submitted that Congress having acted within its constitutional authority, and having in clear terms provided the remedy to which its particular wards, the seamen, are entitled in certain cases, the Court of Appeals erred in failing and refusing to carry out the will of Congress by enforcing the act as it reads. In so doing that court acted in conflict with the established decisions of this Court.

In *Caminetti* vs. *United States*, 242 U. S., 470, it was said, at page 485:

> "It is elementary that the meaning of a statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain, and if the law is within the constitutional authority of the law-making body which passed it, the sole function of the courts is to enforce it according to its terms." • • •
>
> "Where the language is plain and admits of no more than one meaning the duty of interpretation does not arise and the rules which are to aid doubtful meanings need no discussion. • • •"

And, again, at page 490:

> "• • • In other words, the language being plain, and not leading to absurd or wholly impractical consequences, it is the sole evidence of the ultimate legislative intent. • • •"

In *Dewey* vs. *United States*, 178 U. S., 510, this Court said, at page 521 (italics ours):

> "• • • This court has nothing to do with questions of mere policy that may be supposed to underlie the action of Congress. What is termed the policy of the Government in reference to any particular sub-

ject of legislation, this Court has said, 'is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the Court in the interpretation of statutes.' *Hadden* v. *The Collector*, 5 Wall., 107, 111. Our province is to declare what the law is, and not, under the guise of interpretation or under the influence of what may be surmised to be the policy of the Government, so to depart from sound rules of construction as in effect to adjudge that to be law which Congress has not enacted as such. Here, the language used by Congress is unambiguous. It is so clear that the mind at once recognizes the intent of Congress. *Interpreted according to the natural import of the words used, the statute involves no absurdity or contradiction, and there is consequently no room for construction. Our duty is to give effect to the will of Congress, as thus plainly expressed.* • • •'

THIRD POINT.

THE COURT BELOW ERRED IN DISREGARDING THE JUDICIAL HISTORY OF R. S. §4527 AND COGNATE SECTIONS OF THE ACT OF JUNE 7, 1872, WHICH INDICATE THAT THERE SHOULD HAVE BEEN A DECISION SUPPORTING THE PETITIONER'S—SHIPOWNER'S—CONTENTION IN THIS CASE.

The meaning and scope of Section 4527 of the Revised Statutes has never been interpreted by this Court.

The only occasion on which it has been even mentioned, so far as counsel for the petitioners have been able to ascertain, is in the opinion of Mr. Justice Brown in *Tucker* v.

Alexandroff, 183 U. S. 424, at page 444, where it seems to be assumed that the section provides a fixed compensation for seamen wrongfully discharged before the commencement of the voyage or before one month's wages are earned.

There have, however, been a number of decisions in the lower Federal Courts and in some of the State Courts which all tend to support the contention made by the petitioners here that *§4527 gives the seamen an exclusive remedy for a fixed measure of damages*, and when that amount has been paid the seaman has been compensated for his wrongful discharge, and his cause of action therefor has been extinguished.

The Supreme Judicial Court of Massachusetts, in a unanimous decision, in which Mr. Justice Holmes, at that time Chief Justice of that Court, concurred, construed this statute in the manner for which the petitioners contend, and not as interpreted by the Circuit Court of Appeals.

In *Calvin* vs. *Huntley*, 178 Mass. 29, a seaman brought suit under R. S. 4527, for wrongful discharge, claiming the compensation therein fixed. The jurisdiction of the Court was challenged on the ground that the Federal Courts had exclusive jurisdiction under Section 711 of the Revised Statutes of the United States because the suit was for a penalty or forfeiture under the laws of the United States. The Court held that the statute was not penal, but remedial, and said (pp. 31, 32) (italics ours):

> "In each of these actions the plaintiff, a seaman, seeks to recover against the master of the vessel the wages earned by him up to the time of his discharge, and in addition thereto a sum equal to one month's wages, as provided in Rev. Stat. U. S., Sec. 4527
> • • •

"But it is urged that this is an action to recover a forfeiture or penalty, within the meaning of Rev. Stat. U. S., Sec. 711, cl. 2, which provides that the Federal courts shall have exclusive jurisdiction 'of all suits for penalties and forfeitures incurred under the laws of the United States.' Section 4527, which applies to this action, is as follows: * * * It is to be observed that the language of the section is not that ordinarily used in a penal statute. Neither the word 'penalty' nor 'forfeiture' is in it. Moreover, it does not provide punishment for the commission of a criminal offense, nor for the neglect of a statutory duty, nor even for the neglect of a duty in the performance of which the public, as such, may be supposed to have an interest. It speaks not of punishment, but of compensation. Its object is to protect the seaman from loss, rather than to punish the master for discharging him. The remedy is given to the seaman alone, and *its plain purpose is to furnish a clear and well-defined rule of damages, as between him and the master, for a breach of contract in which the seaman and the master or owner are the only persons interested.*

"The statute, being the law of the jurisdiction where the contract was made, is the law with reference to which the parties must be presumed to have contracted, or, in other words, it is the law of the contract, and it is as much a part of the contract as though inserted therein.

"Nor does the rule of damage seem unreasonable. The shipping contract calls upon the seaman to go to various places, sometimes far from home, and it may be, for instance, as in this case was the actual fact, that he may be discharged in a port distant from that where he signed the articles, or where he cannot immediately secure any other employment on board ship or elsewhere, and that in all

> fairness he should recover more than the amount due him for wages earned. *Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract.* The object of the statute is not to punish, but to provide a reasonable rule of compensation in a breach of contract. We think the statute not penal, but remedial. It follows that the State court had jurisdiction." *(*

In *Cox* v. *Lykes Bros.* (1924), 237 N. Y. 376, an action was brought by a seaman under R. S. §4529 for double wages, because of failure to pay wages due. The Court of Appeals had to consider the jurisdiction of the state courts, which turned upon the question whether the extra wages were recoverable as a penalty or as contractual compensation.

The Court held that it was a matter of contractual compensation, following and approving the rule in *Calvin* v. *Huntley*, 178 Mass. 29, and Judge Cardozo, who delivered the opinion of an unanimous court, said, at pages 379-380 (*italics ours*):

> "• • • The Appellate Division found the present suit to be one for a penalty or forfeiture within the meaning of this statute. We do not so regard it. Congress has expressly said that the extra compensation, when due, 'shall be recoverable as wages.' This would seem decisive, without more, that in determining the bounds of jurisdiction, it is not to be classified as a penalty. There was no thought that the state courts, which have undoubted jurisdiction to give judgment for wages in the strict sense, should be shorn of jurisdiction to give judgment for

the statutory incidents. This conclusion is fortified when we search for the purpose of the statute. *The purpose, or at least the predominant one, was, not punishment of the master or owner, but compensation to the seaman.* Delay means loss of opportunity to ship upon another vessel. It means hardship during the term of waiting, the sufferer often improvident, and stranded far from home. 'In all fairness he should recover more than the amount due him for wages earned' (*Calvin* v. *Huntley*, 178 Mass. 29, 32). *How much this extra amount should be would be often a troublesome question if it were left open in every case. 'Hence it might be deemed advisable to have this indefinite element made definite by a general law with reference to which the parties may conclusively be presumed to have contracted, and which, therefore, should be taken to be the law of the contract'* (*Calvin* v. *Huntley, supra; Gerber* v. *Spencer*, 278 Fed. Rep. 887; *Covert* v. *British Brig Wexford*, 3 Fed. Rep. 577, 578, 579). The case cited from Massachusetts is authority for the ruling that an action for extra wages under section 4527 of the United States Revised Statutes, which does not differ in essentials from section 4529, may be maintained in the state courts, and is not an action for a penalty. In harmony with this ruling are decisions of the Supreme Court of the United States, excluding from the class of penalties an action against the infringer of the copyright of a dramatic composition, who must pay not less than $100 for the first and $50 for every subsequent performance (*Brady* v. *Daly*, 175 U. S. 148) and an action under the anti-trust law for the recovery of treble damages (*Chattanooga Foundry & Pipe Works* v. *City of Atlanta*, 203 U. S. 390, Affg. 127 Fed. Rep. 23). * * * "

While the interpretation and construction of this statute has never, before the present case, been necessary for decision by a United States Circuit Court of Appeals, it is believed that in every case where the act has been mentioned, considered or applied by the United States Courts, it has always been regarded as the exclusive remedy of seamen wrongfully discharged within the terms of the statute.

In such cases no other or further claim for damages for such a discharge has been made by counsel or allowed by the Courts.

The Meton, 287 Fed., 531 (C. C. A., 4th Cir.);

Brown vs. *The United States*, 283 Fed., 425 (D. C., N. D. Cal.);

Hughes vs. *Southern Pacific Company*, 274 Fed., 876 (Ward, Circuit Judge, 2d Cir., sitting in D. C., S. D. N. Y.);

The Inland, 271 Fed., 1008 (D. C., E. D. N. Y., affirmed by C. C. A., 2d Cir., without opinion, 279 Fed., 1018);

Caffyn vs. *Peabody et al.*, 149 Fed., 294 (D. C., W. D. Washington);

The Geo. B. Ferguson, 140 Fed., 955 (D. C. Maine);

The Staghound and The Gamecock, 97 Fed., 973 (D. C., Oregon);

The Glencsslin, 96 Fed., 768 (D. C., Oregon);

The Alice Blanchard, 92 Fed., 519 (D. C., N. D. Cal);

The St. Paul, 77 Fed., 998 (Judge Addison Brown, D. C., S. D. N. Y.).

In *Caffyn* vs. *Peabody et al.*, 149 Fed., 294, a suit was brought by a chief engineer for wrongful discharge from a steamer on the Yukon River under a contract of employment at $250 a month and return expenses. Libellant sued for his full wages and the expenses of his return from the Yukon. The Court held the discharge was illegal, and, as more than one month's wages were earned, R. S. 4527 did not apply, but in awarding damages the Court said, at page 297:

> "and, having been discharged without his consent, and without fault on his part justifying such discharge, the court allows him as compensation one additional month's wages. I hold this award to be legal and just, by analogy to the measure of compensation prescribed by Section 4527, U. S. Rev. St."

In *The Glenesslin*, 96 Fed., 768, the seamen had not signed articles or performed services, and the Court held for that reason they had no lien on the vessel, saying, at page 768:

> "* * * Where services have not, in fact, been rendered, there can be no lien as for wages, except in the cases provided for in Section 4527 of the Revised Statutes, where a shipping agreement has been signed, and the seaman is thereafter unwarrantably discharged by the master. In such cases a sum equal to one month's wages may be recovered. * * *"

In *The Alice Blanchard*, 92 Fed., 519, the libellant had signed articles as cook for a number of voyages. On the day agreed he presented himself for work at noon, but the master contended he should have reported at 8 a. m., and put him ashore and sailed away. Libellant sued for wages

(amount not stated) for wrongful discharge. The Court held the discharge wrongful, and said (p. 521):

> "* * * The libellant was to receive $50 per month as wages, and under Section 4527 of the United States Revised Statutes he is entitled to recover in this action a sum equal to the amount agreed to be paid him as wages for one month, and costs of suit. So ordered."

This decision is directly in point and holds that the remedy provided by the statute is exclusive.

In *The St. Paul* (S. D. N. Y. 1897) 77 Fed. 998, seamen who had signed for a voyage from New York to Southampton and back were discharged without fault on their part. They sued for fifteen days' wages, the residue of the ordinary period of the voyage, under R. S. §4527.

Judge Addison Brown held that their discharge was justifiable from the ship's viewpoint, and that probably no wages or compensation other than for the time they had served could have been recovered by them, except for the provisions of §4527. In decreeing the wages claimed by the libellant he said, at p. 999:

> "* * * The wages for the voyage being in this case less than the statutory provision for a month's wages, the claim presented seems to me very clearly within the equity and the intent of the statute; and the same also as respects the right to proceed *in rem*. * * *"

In *The Charles D. Lane* (D. C. Wash. 1901) 106 Fed. 746, a vessel, soon after starting on her voyage, became seriously disabled and was compelled to return to the port

of departure for repairs, where the master discharged the crew and paid them their wages for the time served. The men protested that they were entitled to a month's extra pay under R. S. §4527, but without compulsion accepted the money tendered and signed a release before the shipping commissioner. Upon a suit for the extra wages the court held that they were bound by the release and had waived the benefit of the statute.

In *The John R. Bergen* (S. D. N. Y. 1903) 122 Fed. 98 the libellant was engaged at New York to serve on a ship then lying at Fairport, Va. While he was proceeding south by train the ship sailed, and he was intercepted by telegram and discharged. A day or so later the owners of the ship obtained new employment for him equivalent to the other, which he accepted. He never receipted for his wages nor signed clear of the first ship, and later sued for a month's extra wages under R. S. §4527. The Court held that he had relinquished his right to this by accepting the new equivalent employment.

In cases where a seaman, after having been informed that he is discharged, is told within a short interval to resume his duties and to return to the ship, his refusal to do so bars his right to recover extra wages under R. S. §4527.

Dary v. *The Caroline Miller* (D. C. Ala., 1888), 36 Fed. 507;

The Island (E. D., N. Y., 1921), 271 Fed. 1008, aff'd without opinion, 279 Fed. 1018;

The Meton (C. C. A. 4, 1923), 287 Fed. 531;

Cf. Hughes v. *Southern Pacific Co.* (S. D., N. Y., 1918), 274 Fed. 876 (Ward, Circuit Judge for the Second Circuit, sitting in the District Court).

In *Manhattan Canning Co.* v. *Wilson* (C. C. A. 9, 1914), 217 Fed. 41, a seaman, named Wilson, was injured at the outset of a voyage and was taken to a hospital. Some point was made at the trial that Wilson had been discharged for drunkenness before the voyage began. In passing on this the Circuit Court of Appeals said, at page 43:

> "We do not say that an actual formal discharge would be necessary in order to entitle an owner to discharge his obligation to a seaman by paying him a month's wages, as provided for in section 4527. The conduct of the master or owner, or the existing circumstances, might be such as in law to discharge a seaman from his contract. But that is not the present case * * *."

In *The Great Canton* (E. D., N. Y., 1924), 299 Fed. 953, a vessel had been taken into custody by a United States Marshal on a monition and was subsequently sold. Certain of the seamen sued for one month's extra wages under R. S. §4527 and also for double wages under §4529, on the ground that the seizure had effected a "discharge", and they asked that they should be held to have a lien.

Despite the fact that nothing in the statutes gives a lien Judge Garvin followed Judge Addison Brown in *The St. Paul*, 77 Fed. 998, and held that the seamen had a lien. Though Judge Garvin did not say so, his holding implies that the rights created by the statutes must have been contractual in order to give rise to the lien.

To the same effect is *The Nika* (D. C., Wash., 1922), 287 Fed. 717, in which a maritime lien was given for extra wages under the very similar §4529. The court here followed *Gerber* v. *Spencer*, 278 Fed. 886, and quoted from it. It held the extra wages to be *compensation* for delay and therefore a maritime lien was given.

In *The Fort Gaines* (D. C. Md. 1927), 18 Fed. (2d) 413, 1927 A. M. C. 655, Norwegian seamen sued for extra pay under a Norwegian law similar to R. S. §4529, and the question was whether the seizure of the ship by a United States Marshal amounted to an unwarranted dismissal under Norwegian law. As no interpretation of that law was furnished to the Court, the Court gave that law such an interpretation as would be given to similar laws of the United States, and proceeded to interpret R. S. §§4527 and 4529.

The Court held that there had been a wrongful dismissal and that, by analogy to §§4527 and 4529, such extra pay was given by way of compensation, so that a maritime lien was created as against the ship.

The decisions under R. S. §4529* have been of similar import.

In *The Chas. L. Baylis* (S. D. N. Y. 1885) 25 Fed. 862 a claim for wages was allowed under §4529. Judge Addison Brown said, at p. 863:

---

* This section of the Revised Statutes, which was §35 of the Act of June 7, 1872, is given in full in Appendix I hereof.

"• • • But the extra pay provided by statute [R. S. §4529] is an incident to their claim of wages proper, and ranks with their wages as a prior lien. • • • "

In *The Amazon* (D. C. Wash. 1906), 144 Fed. 153, the interpretation of §4529 was before the Court, which said, at p. 155 (italics ours):

"Under this statute, seamen are entitled to have their wages continue at the contract rate until paid, the wages for the interval of time between cessation of work and payment *being intended as liquidated damages* for the withholding, without sufficient cause, of what is due, and when wages have been honestly earned and become due, and there is no reasonable ground for controversy with respect to the right of the seamen to receive payment, it is eminently just that they should be compensated for vexatious delay by an award of additional wages as liquidated damages. *The Wexford* (D. C.), 3 Fed. 577. • • • "

In *The City of Montgomery* (S. D. N. Y. 1913) 210 Fed. 673, Judge Mayer said, at pages 675-676:

"If, therefore, the seaman had carried out his agreement so far as duration of service was concerned, the next question is whether the provision postponing the payment of wages is lawful. • • •

"It is claimed that the provisions of this statute [§4529] may be waived, and in support of this view claimant cites *The Lillian* (D. C.) 131 Fed. 375, and *The Joseph B. Thomas* (D. C.) 136 Fed. 693, and Id. (C. C. A.) 148 Fed. 762. I think these cases are distinguishable from that at bar, but, in any event, I am of opinion that the master and seaman cannot, by contract, abrogate the provisions of section 4529.

Without enlarging on the history of legislation of this character, it may be said that Congress has long regarded seamen in the nature of wards whose rights must be safeguarded. The requirement to pay them promptly is not to be overridden. • • •

"It is true that the statute does not in terms declare void an agreement in contravention thereof, but, in speaking of the termination of 'the agreement', it is clear that Congress had in mind that, no matter what 'the agreement' was, the seaman's wages must be paid within two days after the man had duly performed the service required by 'the agreement'. Holding this view, I am of opinion that the statute is controlling, and that the provision in the articles here discussed was void and of no effect."

In *Gerber* v. *Spencer* (C. C. A. 9, 1922), 278 Fed. 886, the Court held that extra pay under R. S. §4529, was "extra pay by way of compensation for delay. The extra pay is an incident to the claim of wages proper." To sustain this position the Court then quoted with approval the statement of Judge Choate in *Covert* v. *British Brig Wexford*, 3 Fed. 577.

In *Buckley* v. *Oceanic S. S. Co.* (C. C. A. 9, 1925), 5 Fed. (2d) 545, an action was commenced on July 16, 1923, by a seaman for wages and double wages under R. S. §4529. The cause of action accrued on June 27, 1921, and the California statute of limitations barred actions on contracts not in writing in two years. It was held that the action was for wages and not for a penalty, and judgment was given for the defendant. The Court said, at page 546:

"• • • The nature of that statute (section 4529), whether it is remedial or penal, has been con-

sidered by this and other courts, which have held that sums recoverable under its provisions are treated as wages—compensation to seamen, rather than punishment of the master. *Gerber* v. *Spencer* (C. C. A.), 278 F. 886; *Cox* v. *Lykes Brothers*, 237 N. Y. 376, 143 N. E. 226."

In *The Trader* (D. C., So. Car. 1926), 17 Fed. (2d) 623, Judge Cochran said, at page 625, in construing R. S. §4529:

"• • • • In a certain sense, the double wages are penalties, but not in the legal signification of the term. The obvious intent of Congress was to protect the seamen and assure them a prompt settlement, in view of the nature of their employment and the likelihood of their being discharged far from home, and, in the event of a failure to pay, to secure them an adequate compensation for such failure. It is to be observed that the statute expressly says that these so-called penalties shall be *'recoverable as wages'*. They are an incident to and a part of the actual wages, just as much as interest is an incident to and a part of a debt. They are intended as compensation for the delay in the payment, and, inasmuch as they are an incident to and a part of the wages, they will constitute a maritime lien on the vessel, the same as wages."

The established principle of general maritime law, which was embodied in our law by §4527 for the control of the relations between vessels of the United States and seamen therein has been applied by our courts to foreign ships.

In *Covert* v. *British Brig Wexford* (S. D. N. Y., 1880), 3 Fed. 577, a libel was brought by British seamen for wages

due and for extra wages under Sec. 187 of the Merchant Shipping Act (17 & 18 Viet., *c.* 104).

Judge Choate said, at pages 578-579 (italics ours):

> "I think the extra pay due to the seamen is to be treated as wages, for which they have a prior lien on the vessel. The statute provides that it shall be recovered as wages. This clearly means by the same methods or modes of procedure. The customary mode of recovering wages is by libelling the ship. The language, therefore, necessarily implied that the ship is holden for this extra pay. And, aside from this particular language of the statute, I think that, from the nature of the provision, and the purposes it was intended to subserve, the extra pay may be properly regarded as an addition or increase of wages in the event of the neglect of the master or owner to provide for their prompt payment. We have a similar provision in our own act. These statutes are designed for the protection of seamen; to prevent the abuse of withholding their pay, and thereby keeping them in port at expense and out of employment while waiting for a settlement. *It is a liquidated indemnity for such enforced expense and delay.* It is limited to ten days, perhaps upon the theory that the summary powers of the admiralty courts, everywhere exercised for the protection of seamen, can, within that time, be brought to bear for their relief, and to encourage diligence on their part in presenting and prosecuting their claims. These protective statutes would be of little or no value to the seamen if they do not give them a lien on the vessel. A mere right to enforce a personal claim for such small sums against the master or owner would generally be of no value to them. And, if they have a lien, it must, I think, be presumed that it was intended to be a lien in all respects like

> that for their stipulated wages—one equally beneficial to them. *The contract with the seamen is to be deemed made with reference to the existing law governing the ship*, which, in this case, is the British law, and the right to the extra pay must be deemed secured to them by the contract itself. *The wages must be deemed by the contract to be agreed upon as this much more in case of delay in payment.* There must therefore be a decree for the seamen for their wages and extra pay, with costs, payable at once, in preference to all other claims."

In *The Adolph* (S. D. N. Y., 1881), 7 Fed. 501, a Swedish bark had been in a collision, for which it was libelled, and it was also libelled by the insurer of the cargo. Thereafter the owner abandoned the voyage and the seamen libelled her for wages and for three months' extra wages under the Swedish law. In awarding the entire wages claimed, Judge Choate said, at pp. 503-504:

> "• • • I see no reason why the seamen should not have the extra wages which the law of their country gives them. A similar point was ruled in favor of the seamen in the case of *The Wexford*, 3 Fed. Rep. 577. This allowance is a liquidated and certain substitute for the claim which, independently of positive law, the seamen are entitled to when the voyage is broken up in a foreign port. • • •"

In *The Fort Gaines* (D. C., Md., 1927), 18 Fed. (2d) 413, it was found that under the maritime law of Norway a mate or engineer is entitled to two months' wages for wrongful dismissal and all other members of the crew to one month's wages.

The Court, in a suit for extra pay under this law, homologized the Norwegian Act to the American statute,

gave the crew a lien for the extra pay, and inferentially held the extra pay to be compensation under the contract.

It is submitted that in addition to the cases already cited, R. S. §4527 has been before the Courts only in the following cases, in no one of which has the statute been construed or interpreted according to the decision of the Circuit Court of Appeals herein, *viz.*:

The Donna Lane, 299 Fed., 977 (D. C., W. D. Washington);

The Quaker City, 290 Fed., 409 (D. C., Maryland);

The August Belmont, 153 Fed., 639 (D. C., S. D. Ga.);

The Joseph B. Thomas, 136 Fed., 693 (D. C., E. D. Pa.);

The Villa y Herman, 101 Fed., 132 (D. C., S. D. Ala.);

The Schooner Jefferson Borden, 6 Fed., 301 (D. C., Delaware).

The Circuit Court of Appeals for the Fifth Circuit, therefore, has decided herein an important question of Federal law, construing an important Federal statute, and has rendered a decision in conflict with the weight of authority as established by the decisions of the United States Courts and of such State Courts as have had the question before them.

The Judicial history of R. S. §4527, which we believe we have given fully and fairly above, completely supports, it is submitted, the contention of the petitioners herein that the libel should have been dismissed.

LAST POINT.

THE DECISION OF THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT SHOULD BE REVERSED AND THE CASE SHOULD BE REMANDED WITH INSTRUCTIONS TO THE DISTRICT COURT FOR THE EASTERN DISTRICT OF LOUISIANA TO DISMISS THE LIBEL.

November, 1927.

Respectfully submitted,

JOHN M. WOOLSEY,
GEORGE DENÈGRE,
JAS. HY. BRUNS,
GEORGE DENNENY,
FREDERIC R. SANBORN,
Counsel for Claimants Petitioners.